

## **REMARKS**

In response to the final Office Action dated September 8, 2008, the Assignee respectfully requests continued examination and reconsideration based on the above amendments and on the following remarks.

Claims 45-66 are pending in this application. Claims 1-44 were canceled without prejudice or disclaimer.

### **Rejection of Claim 66 under § 101**

The Office rejected claim 66 under 35 U.S.C. § 101 for claiming non-statutory subject matter. The preamble of independent claim 66, however, has been amended to recite a “*computer program product comprising a computer readable storage medium storing processor executable instructions for performing a method of targeting content.*” Support may be found at least at page 8, lines 3-13 of the as-filed application. The Assignee thus respectfully asserts that claim 66 fully satisfies § 101.

### **Rejection of Claims 45-66 under § 102 (e)**

The Office rejects claims 45-66 under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent 6,327,574 to Kramer, *et al.* A claim, however, is anticipated only if each and every element is found in a single prior art reference. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d (BNA) 1051, 1053 (Fed. Cir. 1987). *See also* DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2131 (orig. 8<sup>th</sup> Edition) (hereinafter “M.P.E.P.”).

Using this standard, claims 45-66 are not be anticipated by *Kramer*. These claims recite, or incorporate, features that are not disclosed or suggested by *Kramer*. Independent claim 45, for example, recites “*calculating a score for the content item by comparing the at least one associated tag to the user profile*” and “*comparing the score to a threshold score.*” Independent

claim 45 also recites “*when the score satisfies the threshold score, then determining that the content item is appropriate for presentation*” and “*selecting one of the multiple data streams having the score that satisfies the threshold score.*” Support for such features may be found at least at page 4, lines 6-9. Independent claims 56 and 66 recite similar features.

*Kramer* cannot anticipate all these features. *Kramer* discusses how multiple television commercials may be broadcast over a cable network, and the appropriate commercial is selected based on a customer’s profile (constructed from viewing habits). See U.S. Patent 6,327,574 to *Kramer, et al.* at column 9, lines 45-53. Yet nowhere does *Kramer* disclose or suggest “*calculating a score for the content item by comparing the at least one associated tag to the user profile*” and “*comparing the score to a threshold score,*” as independent claim 45 recites. *Kramer* is also silent to “*when the score satisfies the threshold score, then determining that the content item is appropriate for presentation*” and “*selecting one of the multiple data streams having the score that satisfies the threshold score.*”


Independent claims 56 and 66 recite even more distinguishing features. Independent claims 56 and 66, for example, recite “*receiving an internal insertion event for a content menu*” and “*ordering the content menu with content items having a highest probability of interest according to the user profile.*” Support for such features may be found at least at page 11, line 26 through page 12, line 3. *Kramer* fails to teach or suggest these features.

Independent claim 66 recites still more distinguishing features. Independent claim 66, for example, recites “*presenting a targeted content item when the targeted content item is associated with a zone improvement plan matching the user profile.*” Support for such features may be found at least at page 33, lines 3-9. *Kramer* fails to teach or suggest these features.

*Kramer*, then, cannot anticipate claims 45-66. Independent claims 45, 56, and 66 all recite distinguishing features. Their respective dependent claims incorporate these same distinguishing features and recite additional features. *Kramer*, then, cannot anticipate claims 45-66. The Office is thus respectfully requested to remove the § 102 (e) rejection of claims 45-66 over *Kramer*.

If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 469-2629 or [scott@scottzimmerman.com](mailto:scott@scottzimmerman.com).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott P. Zimmerman', with a stylized flourish at the end.

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